IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4903 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BAHADUR BALABHAI DEVIPUJAK

Versus

STATE OF GUJARAT

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Appearance:

MS KRISHNA U MISHRA for Petitioner

MS HB PUNANI AGP for Respondents

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 25/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Rajkot City, on 19th of December, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 19th of December, 2004 in pursuance of the above order. Co-detenu of the petitioner preferred Spl. Civil Application No. 4538 of 2005 which was allowed by this Court vide order dated 19th of April, 2005 on the ground that the petitioner was in judicial custody when the order of detention was served upon him.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration five criminal offences registered against the petitioner under Sections 454, 457 and 380 of the Indian Penal Code, and secondly, two in-camera statements as recorded by the sponsoring authority on 15th of December, 2004 as verified by the detaining authority on 16th of December, 2004. The identify of the witnesses is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act.

3. Out of five crimes registered against the petitioner for committing theft, the first four cases were registered before 'B' Division Police Station, Rajkot, on 17th of November, 2004, 29th of November, 2004, 1st of December, 2004 and fourth also on 1st of December, 2004. In each case, it was alleged that the petitioner was involved in theft of lump of gold or sliver. The fifth case was registered before Taluka Police Station, Rajkot, on 5th of September, 2004, wherein as per the allegation, the petitioner was involved in theft of lump of gold weighing 10 grams. The detaining authority considered thoroughly and exhaustively the investigation papers in all five cases and concluded that the petitioner was habitual offender of committing thefts.

4. Out of two in-camera statements, the first witness referred to an incident of 11th of November, 2004, wherein at about 6.00 p.m. the petitioner along with his accomplices approached the witness along with some gold and sliver ornaments and demanded Rs. 5,000/- and offered said ornaments to the witness. On refusal by the witness, he was beaten and threatened with weapons and public order was disturbed. The second witness referred to an incident of 9th of October, 2004 wherein

also the petitioner along with his accomplices approached the witness at about 10.00 a.m. with some ornaments of gold and silver and insisted that either witness should purchase those ornaments or assist the petitioner in selling those ornaments and in that case the witness was to be given huge commission. The witness refused the offer of the petitioner and, therefore, he was beaten in the public place. Though a crowd was gathered, but it was dispersed on account of fear and terror of the petitioner. The public order was disturbed.

5. Relying upon the above materials, the detaining authority concluded that the petitioner was engaged in illegal activities of committing theft of ornaments and was a habitual offender. The detaining authority also concluded that the petitioner was dangerous person within the meaning of PASA Act. The detaining authority concluded that the petitioner was headstrong and ferocious person and was keeping deadly weapons with him. It was alleged that the petitioner formed a gang of headstrong persons and along with the gang, committed the offences of theft and was in habit of administering threats to the innocent citizens and to beat them. On account of fear and terror created by the petitioner, nobody was coming forward to file any complaint against the petitioner. The detaining authority concluded that the dangerous activities of the petitioner were prejudicial to the maintenance of public order and such activities were required to be prevented forthwith. After considering other alternative remedies available against the petitioner under the general law, the detaining authority concluded that there was no other alternative, except to detain the petitioner under the PASA Act as dangerous person to prevent his illegal activities forthwith. The detaining authority, therefore, passed an order of detention of the petitioner, as aforesaid, which is under challenge in this petition.

6. Learned advocate Ms. Krishna Mishra for the petitioner and learned AGP Ms.H.B.Punani AGP for the respondents were heard at length. The affidavit-in-reply as filed by the detaining authority, as placed on record by the learned AGP, is also taken into consideration.

7. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue as to whether the detaining authority applied mind properly to the materials placed before him in arriving

at the subjective satisfaction.

8. The grounds of detention placed on record make it abundantly clear that the petitioner was in judicial custody in all five cases registered against him, when the order of detention was executed and served upon him on 19th of December, 2004. The grounds of detention further reveal that the petitioner was arrested on 29th of November, 2004, in the crime shown at Sl. No.1 and thereafter constantly he was under judicial custody till the order of detention came to be served upon him. In the meantime, he was also arrested in other offence. In this respect, the detaining authority reached to the subjective satisfaction that though the petitioner was in judicial custody in all the five crimes registered against him at the time of execution of order of detention, but at any time, the petitioner was likely to move applications for bail in the said cases and after releasing on bail, the petitioner was likely to continue his illegal activities.

9. The facts of the present case are squarely covered by the decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, as reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail was not held a cogent material and the detention order based on such material was held liable to be quashed.

10. True it is that, the order of detention can be passed and executed upon the detenu, even if, the detenu is in judicial custody. The judicial custody necessarily implied that the detenu is out of circulation and in confinement. Therefore, in this respect, the law is established that though the order of detention can be passed and executed, even if, the detenu is in custody, then the subjective satisfaction of the detaining authority that the custody of the detenu was likely to be ended, must be based upon the cogent materials. This is the ratio laid down by the Apex Court in the matter of Amritlal [supra]. In the present case, it becomes clear from the grounds of detention that the petitioner-detenu was arrested on 29th of November, 2004 in the crime registered against him before 'B' Division Police Station, Rajkot, and thereafter constantly the petitioner

was under judicial custody in all five cases. The petitioner had not even moved any bail applications in such cases, which becomes clear from the grounds of detention because the detaining authority mentioned in the grounds that the petitioner was likely to move applications for bail in the said four cases. Though the Apex Court made it clear in abovesaid decision that the filing of an application for bail is itself not a cogent material to infer that the petitioner was likely to be released on bail. In the present case, the petitioner had not preferred even applications for bail till the execution of the order of detention. The subjective satisfaction, therefore, arrived at by the detaining authority that firstly the petitioner was likely to move applications for bail and again going further that on filing of such applications for bail, the petitioner was likely to be released on bail, is not based on any materials placed before the detaining authority let alone any cogent material. Learned advocate for the petitioner makes a statement that subsequently the petitioner filed applications for bail and he might have been released on bail. The point in issue is whether the detaining authority applied mind properly in arriving at subjective satisfaction. In the above view of the matter, it becomes clear that on two aspects, firstly for moving applications for bail and secondly releasing the petitioner on bail, no material at all appears to have been placed before the detaining authority detaining authority reached to the positive conclusion in this respect. In both the above aspects, the subjective satisfaction arrived at by the detaining authority is not valid, legal and in accordance with law. The order under challenged, therefore, is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by the Police Commissioner, Rajkot City, on 19th of December, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu Bahadur Balabhai Devipujak is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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